

GOVERNANCE OF INDIA.

**A Commentary on the Government of India Act,
(Consolidated) of 1919, with additional chapters
on the Indian Local Government, Indian
Army, Indian Finance, and the Native
States in India.**

BY

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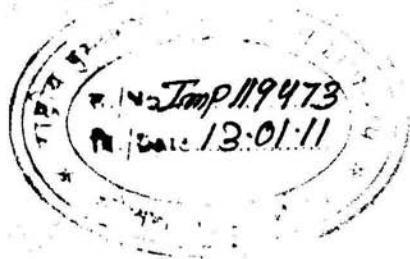
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INTRODUCTION.

India's Place in Imperial Federation.

To attempt a full description of the political institutions of a country is a very difficult, and often a thankless task. The entirety of administrative organs, with all their complexity of structure and variety of functions, is seldom described in a single instrument. In many countries, like Hungary, or Russia, or England, no such document at all exists. Even in the countries—like the United States or France—where all constitutional provisions are supposed to be contained in one document—the silent growth of usage, the accumulated force of indefinite but well-known precedent, render the letter of the constitution incomplete if not obsolete, unreliable if not altogether fictitious. Change and progress is the one law of human life to which all human institutions must submit, and political institutions, far from being an exception to the rule, are amongst the most unstable of our achievements. The experience of France alone suffices to show that a constitutional instrument, if it aims at immutability, attempts an impossible task. For the functions and importance of administrative authorities vary, even while the constitution which instituted them remains itself unchanged. Only, in the absence of specific amendments of the constitution, the ingenuity of constitutional lawyers, sharpened by the exigencies of an unthought of situation, will suggest interpretation, which, because they were never intended by the authors, will not be the less approved and accepted. Such interpretations make the original, unaltered constitution a mere fiction, a standing, solemn, satire on those who intended it to be unalterable. Besides, in describing political institutions, an honest author has often to wrestle—consciously or unconsciously—against the influences of his own education and environment. He has eternally to be on his guard against losing sight of the perspective between the past and the present. Living in the present, thinking always of the present, he often unwillingly, unconsciously exposes himself to the charge of partisanship. To avoid

that charge altogether ought to be the aim, but it is often an impossible ideal. To outline all the aspects of a question would be the safest rule of conduct, but for the risk of undue prolixity. To present one's own opinion on a question, and to support it, when necessary, by examining and exposing the opposite opinion is possible to every writer, and not entirely reprehensible.

These difficulties, common to all writers on political subjects, are particularly hard to overcome for a writer on the Indian polity. The powers of the Government of India are derived from several sources, and of these the Acts of Parliament are the most important to-day. An Act of Parliament seldom deals exhaustively with a topic; but even when it does, English legislators delight in fashioning each Act so far as to suit only the exigency of the moment. They fancy themselves to be of an eminently practical bent of mind, because they exclude logic and system in the conception and finish of their creations. One cannot quarrel with a people, who serenely accept their obvious defects as the undisputed hall-mark of their genius. But since Acts of Parliament—even the best of them—leave ample room for forensic construction and judicial interpretation, the student is bewildered by the number alone of the statutes—each explanatory, amendatory, or abrogatory of the previous ones—through which he has to pursue his investigations. In the case of the Government of India, for instance, the consolidating Act of 1815 had to repeal, or amend, 47 previous statutes, and the Consolidating Act was itself amended within less than a year after its passage, not to mention the more radical changes in 1919.

Acts of Parliament, even when they are logical, systematic, and comprehensive, do not tell the whole tale. At most they can provide the bare skeleton; the breath of life has to be infused from other sources. Under the Company, two distinct agencies tried to fill up the inevitable gap left by an Act of Parliament. Great pieces of legislation, like the Charter Acts, were preceded by exhaustive inquiries by Parliamentary Committees, and the Acts were based on the reports of those committees. These reports, therefore, served as an unfailling guide to the motives actuating the authors of that legislation. And when a new Act was passed, the comments of the

Court of Directors, embodied in their dispatches to the authorities in India, served to explain and illustrate the changes made in the *status quo*. They used to be regarded as an authority on the principles governing the relations between the supreme government and its provincial lieutenants in India. Valuable light may also be thrown on the scheme of the Governance of India under the Company by the pages of Hansard, though this last becomes particularly important only after India had passed to the Crown. More important than these is the voluminous literature comprising the biographies and private correspondence of some of the leading personages in the story of India under the British rule.

With the aid of these several agencies of Parliamentary reports and Directors' dispatches, and the lives and correspondence of men like Clive and Hastings, and Burke and Dundas, and Canning and Wellington, we may indeed succeed in animating the bare skeleton provided by parliamentary enactments. But, as already observed, these are not the only sources of the power of the Government of India. The prerogative of the Crown—vague and extensive in England, is not insignificant in India. And a still greater portion of the governmental machinery depends upon the acts and ordinances of the local legislatures and authorities. The entire scheme of local self-governing institutions in India, or the great code regulating the conduct of public servants in India, is the result of such action. These local acts, ordinances, and resolutions are more numerous than the statutes of Parliament, and need external commentaries as much. The force of custom and precedent, ever very powerful, is particularly important in the bureaucratic atmosphere of India. To explain this mass of local acts, to render precise the indefinite sway of usage, the student must seek the help of the published volumes of dispatches and correspondence, as well as that of the speeches and writings of eminent men connected with the administration, like Sir R. Temple, Sir J. Strachey, Sir H. Maine. **Reports of Royal Commissions**, and resolutions of policy issued by the Imperial Government or the Legislature are also indispensable.

The mere mention of the necessity to consult such a variety of authorities would suffice to give an idea of the difficulties of a student.

of Indian political institutions, even in that portion of them which has been the subject of definite legal enactments. A not insignificant portion of the powers of government in India is derived from the ancient rulers of the country. This is a heritage of the days when there was no constitution, and when the personal genius or caprice of the ruler was all. The whole of the Indian system of finance, if we exclude the most recent changes; the chief sources of public revenues; the constitutional position and practical importance of the Army—all alike bear witness to this heritage of our past. In this respect the greatest difficulty is the lack of any authoritative pronouncement guiding the policy. As an instance in point, we may mention the position of the Native States in India. The relations between the British Government and the Native States have formed the subject of numberless treaties and engagements and *sanadas*. But many of the treaties, even when they have not been specifically annulled or abrogated, are often obsolete owing to the ever increasing mass of custom and precedent, and not less to the changed atmosphere of the times. The older treaties contemplate the relations of equal allies; the more recent ones seem to suggest the position of sovereign and feudatories. We are at a loss to determine the exact principles governing this subject in spite of an illuminating treatise by the late Sir W. Lee-Warner, because it has ever been the policy of the Government of India to regard these relations as confidential.

Yet another difficulty is raised by the admitted fact of political transition in India to-day. The European War proved serviceable to India inasmuch as the claims of India obtained recognition, thanks to her services to the British Empire in the hour of its utmost need. But the changes brought about by the Act of 1919, following upon the joint Report on Constitutional Reforms promised by a Parliamentary declaration of August 1917, are themselves proving insufficient. The Legislative Assembly has more than once tabled and discussed resolutions demanding immediately a further instalment of Reforms, notably in the direction of introducing responsibility in the central government and abolishing the Dyarchy in the Provincial government. But in the life-time of the first Legislative Assembly, elected under the reformed constitution,

Government remained inflexible in their attitude of not hurrying until the novitiate of ten years—as required by the Act of 1919,—was completed by the Indian people. They were helped in this attitude, possibly, by the doctrine of Non-Co-operation with the irresponsible Government; for under its influence the most advanced and popular section of the Indian public leaders omitted to contest seats in the Legislature. That doctrine has been, since the incarceration of its author and exponent, modified. A party of the advanced nationalists decided to fight the general elections of November 1923, and are now in appreciable strength in every province and even in the central Assembly. Under their influence, a fresh resolution has been passed in the Assembly, demanding immediate further advance even while these pages are going through the press. And though the arch-apostle of the Non-Co-Operation doctrine has been released before his time, it is an open secret that the present Indian Constitution can by no means be regarded as final and eternal. Nor does the Act of 1919 itself make any such pretence.

In the following pages, I have discussed only the domestic problems of India from the standpoint of an Indian statesman. But the aspect of India as a unit of the British Empire has, by recent events, acquired an importance which no student of Indian political institutions can ignore; and this is perhaps as fit a place as any in the body of the book to discuss that aspect. No one can write now, as Prof. Lowell wrote only a few years ago, that the question of Imperial Federation can have reference only to the Self-Governing Colonies and England. If we are to believe the highest authorities in England, and if we may accept some of the recent events as an earnest of intentions, we may take it as settled that no scheme of Imperial Federation will now be entertained which does not incorporate India as an integral part of the Federation. The question, then, to discuss is: how the idea of the Federation, if realised, will affect India, and what would or ought to be India's position in the Federation.

It may be observed at the outset that there is not, and there cannot be, that unanimity of sentiment in favour of a closer union which we in India are at first sight apt to imagine. A closer union of the

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various Self-governing Dominions would impair the autonomy enjoyed. That there is at all a sentiment for a closer union, and that not in England alone, is explained by the fact that, under the existing state of things, on all occasions of the greatest moment, England could virtually compel her self-governing colonies to forego some of the powers of local autonomy. Said Mr. Hughes the Australian Premier, on the eve of his departure from England in 1916: "The consequences of the War to the Dominions are not confined to contributions of men to fight the battles of the Empire, nor to their maintenance; but extend in such a way as in effect to reduce the self-governing powers of the Dominions, merely giving effect to the war policy determined by those who control it. And the effect of doing so will not end when the war ends, but will remain for many years—in this case at least for a generation—to modify profoundly, if not actually to determine, the policy of the Dominions. It will hardly be denied that if Britain had a right to compel the Dominions to incur such a tremendous burden of debt, as this war will impose upon all of them, it has, for all practical purposes, the power to compel them to impose heavy taxation upon themselves: and, if one nation has a right to tax another, it is perfectly clear that the sovereignty or quasi-sovereignty of the latter disappears". (The Times, June 1916.) This long extract is given to show that the idea of a closer union of the Empire, stripped of its sentimentalism, is caused: on the side of England by the difficulty to meet single-handed the cost in men and money of a modern European War, as also the much greater cost of preparing for it; and on the side of the Dominions in a desire to control the foreign policy of the Empire with a view to reap the economic and other advantages expected to result from a control of the external affairs. Where colonial politicians have not yet risen to the stature of Imperial statesmanship; where the perception of advantages resulting from a co-ordination of foreign policy and defence is yet vague, the sentiment for union, involving a surrender in some measure of the powers of self-government, does not find favour with the public. Thus at a Nationalist Congress in South Africa, held at Worcester in September 1916, a resolution was moved and carried: "This Congress, having heard of the movement in the United Kingdom and its colonies in favour of a reconstruction of the British Empire,

declares itself as strongly as possible against such reconstruction, which may have the effect of any reduction of the existing rights of colonial self-government, or any interference with the immediate power of the people of the Union, or our Government, over matters of moment to the country." This resolution expresses the sentiments of a significant portion of the people of that colony. Perhaps we may explain this opposition to federation in South Africa on the ground of the unfortunate race question between the Boer and the Briton. Such race differences exist even in other colonies. That French and English Canadians are at one for the time may be explained by the close alliance between England and France. But should a conflict occur between those countries, or worse still, between England and the United States, may not the same opposition be apprehended in Canada? Even in the purely British Colony of Australia the sentiment in favour of a Federation is by no means so unanimous as the utterances of Mr. Hughes and other Imperialist politicians might suggest. An Australian correspondent of the *New Statesman* wrote from Melbourne on February 16, 1917: "The opinion prevails in the country that Australia's real attitude towards Imperial Federation has been seriously misrepresented by publications like the *Round Table* and the *Quarterly Review*, and a certain group of officials and politicians who pose as authorities on Commonwealth affairs.....The truth is that outside a very limited circle there is nobody of opinion which favours Imperial Federation or any closer political bonds with the United Kingdom." In support of this view the same writer quoted the "Sydney Telegraph" writing as follows:—"Nothing exists to show that the system which has yielded such excellent results until the war and during the war, cannot continue to do so. It is quite unwarranted to assume that in its foreign policy the Imperial Government, as matters stand, does or can ignore the interests of the Dominions, or that under a system of Imperial Federation, our influence upon the shaping of such policy would be greater than it is now. Any representation that you have in an Imperial Government would be sufficient to enable the Commonwealth view appreciably to affect its decisions." (*The New Statesman*, April 21, 1917). In India also, the ultra nationalist circle does not, by any means, smile upon the idea of for ever main-

taining connection with Britain, which is perceived to have its bright as well as the dark side. In more than one session of the Indian National Congress have motions been tabled for complete independence; but for the present, however, the more moderate views seem to have triumphed. In Britain the last attempt made to rivet the bonds of the Empire indirectly, at least by trade preferences, has failed, and the idea is dead for the moment.

Under such a state of public opinion in the colonies, it would be presumptuous for an individual citizen of any part of the Empire to pronounce upon the desirability of the Federation. Nor can it be said yet what powers and functions will be allotted to the Imperial Council proper, if and when one is constituted, and what would be its relations with its constituents; though this much seems self-evident that at least the foreign affairs, defence, and some portion of financial powers will have to be made over to such a council. The case for a closer union with the United Kingdom and her colonies is a fair one in India, though some of the advantages supposed to result from such a union are likely to be exaggerated. Thus, we are often told, that India gains immensely in administrative efficiency by that class of her public servants who are trained in England. By severing her connection with the Empire, India might no doubt lose her English servants; but England is no longer the only country for training up young men in the rudiments of public service: nor are Indians altogether lacking in a turn for public service in every branch. On the other hand the necessity of public defence is yet too great for India to deny the value of England's co-operation in the defence of the country. The question whether India can ever be equal to her own defence is altogether a different one. But under the existing circumstances, and in view of the modern methods of warfare, it would be absurd to suggest that India could depend upon herself-unaided by England-at least for a generation. That her possible enemies on the frontier are weaker and cruder than herself is not a reason which proves India's ability to meet all possible exigencies. In economic matters, too, membership of the Empire is fraught with decisive advantages for us. India is only just waking up to her vast industrial possibili-

ties. These she cannot develop without capital. And capital she would find on easier terms by participating in the joint credit of the Empire than on her own credit. Moreover, with the foreign affairs in the control of a truly Imperial Council, in which India has her representatives, she might quite possibly succeed in securing for herself those economic advantages with which most treaties of the last generation were so fully occupied. The case for a closer union is, therefore, strong on military and economic grounds.

On the other hand, we must not ignore the possible case on the other side. The unfortunate experience of the consequences of a difference in race may incline many Indian publicists to declare against a closer union. But the question of a closer union can only be discussed on the assumption that India is completely autonomous for all her local affairs; and, with a popular and responsible government in India—which is given an equal recognition in the Council of the Empire, the fears of racial differences are apt to be exaggerated, if not entirely unfounded. The experience like the one Indians were meeting with in South Africa, and more recently in Kenya, may not be quite impossible even under a federated Empire; but it may be safely said that such experiences will be rare; and always likely to be effectively remedied by India herself or by the Imperial Council. India was recognised and treated as an equal with the Dominions at the Peace Conference of 1919. She is an equal, original member of the League of Nations. The Imperial Conference of 1921 passed a resolution for equality of treatment to Indians in the Dominions, South Africa alone dissenting. The hopes, then, of an equal and autonomous Government of India, taking its proper place in the Council of the Empire, if and when one is formed, is by no means quite an illusion.

Another obstacle in the way of a closer union may be found in the current of the informed public opinion of to-day. Leaders of public opinion seem to have definitely accepted the idea of provincial autonomy; but the logical conclusion of such an idea may quite possibly be a desire like the one expressed by the "Sydney Telegraph" quoted above. An attempt has been made in the body of this book to show why a really self-governing India would not

need provincial autonomy so urgently as leaders of public opinion seem to think to-day. In any case it is not unreasonable to believe that a fuller realisation of India's political and economic needs would prevent the turn of Indian nationalism in a channel which might lead to a desire for separation from the British Empire in the near future. As already observed, the materialisation of all these advantages is conditional upon India's being admitted in the Council of the Empire on terms of perfect equality. Even so, one might urge that no scheme of representation can give any single part of the Empire an appreciable influence in the joint Council of the Empire. Such a line of argument is based on a misconception of the nature and functions of the Imperial Council. While admitting that the constitution of the common council is bound to tax heavily the resources of Imperial statesmanship; while confessing that the problem of securing proper representation to each unit according to the different principles of population and political and economic importance is a grave one, we may yet say that the Imperial Council will only deal with purely imperial questions. The Government of India, like those of other units, will be supreme in the local concerns of India; and Indian representatives, we may assume, will be allowed a preponderant voice in the Imperial Council in those foreign questions which relate exclusively or preponderantly to India. As regards inter-state differences, the unbiassed opinion of a majority of the elect of the whole Empire may well be allowed to prevail, though such a device as a two-thirds majority in all fundamental questions of imperial policy may be profitably adopted. And as for the burdens of the Empire, necessarily resulting as a corollary of the union, they will have to be accepted if the advantages of the union are at all commensurate.

The last Imperial Conference held in London in October 1923 discussed carefully the question of the control over the Foreign relations of the Empire, and came to the following conclusions :—

"The Conference recommends, for the acceptance of the Governments of the Empire represented, that the following procedure should be observed in the negotiation, signature and ratification of international agreements.

The word 'treaty' is used in the sense of an agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between heads of states, signed by plenipotentiaries provided with full powers issued by the heads of the states, and authorising the holders to conclude a treaty.

1. Negotiation.

- “(a) It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.
- “(b) Before negotiations are opened, with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested, are informed, so that, if any such Government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.
- “(c) In all cases where more than one of the Governments of the Empire participate in the negotiations, there should be the fullest possible exchange of views between those Governments before and during the negotiations. In the case of treaties negotiated at International Conferences where there is a British Empire Delegation on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilised to attain this object.
- “(d) Steps should be taken to ensure that those Governments of the Empire whose representatives are not participating in the negotiations, should during their progress, be kept informed in regard to any points arising in which they may be interested.

Signature.

"(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the Government of that part. The full power issued to such representatives should indicate the part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be so worded as to make its scope clear.

"(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the Governments concerned.

"(c) As regards treaties negotiated at International Conferences, the existing practice of signature by plenipotentiaries on behalf of all the Governments of the Empire represented at the Conference should be continued, and the full powers should be in the form employed at Paris and Washington.

3. Ratification.

"The existing practice in connection with the ratification of treaties should be maintained.

II.

"Apart from treaties made between heads of States, it is not unusual for agreements to be made between Governments. Such agreements, which are usually of a technical or administrative character, are made in the names of signatory Governments and signed by representatives of those Governments, who do not act under full powers issued by the heads of the states; they are not ratified by the heads of the states, though in some cases some form of acceptance or confirmation by the Governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations, the Governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps

should be taken to ensure that the Government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views".

The resolution was submitted to the full Conference, and unanimously approved. It was thought, however, that it would be of assistance to add a short explanatory statement in connection with part I (3), setting out the existing procedure in relation to the ratification of treaties. This procedure is as follows:—

- (a) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the Government of that part;
- (b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether Parliamentary approval or legislation is required before desire for or concurrence in ratification is intimated by that Government.

Subsequently Canada has obtained the right of direct representation at Washington.

In the face of this, I have ventured to present, in the following pages, a picture of the administrative machinery of India as it works today. The picture, it need hardly be added, is bound to be sketchy, and perhaps incomplete. My only excuse for making an effort at all is the growing interest in an ever widening circle in political questions. It would be a pity if the awakening consciousness of the people of India to their political existence were left to be guided entirely by those amateur politicians, who are frequently without any equipment to handle political questions save their commonsense. I have endeavoured to make this little work interesting—and even useful—to a wider circle than the one embracing the under-graduates of our University, though, it must be confessed, the first impulse to write originated from my connection with the students. And in saying this I have no intention to underrate the merits of those eminent

authors, who had already endeavoured to enlighten the Indian and English public on the subject. Sir Courtney Ilbert's work is deservedly recognised as an authority. Sir George Chesney's classic "Indian Polity" has even now its own value. Sir John Strachey has given us an admirable picture of India as a high official of a generation ago looked at it, and his successors and imitators like Sir B. Fuller have not corrected their angle of vision. The Imperial Gazetteer gives a colourless but clear and authoritative version of the administration of India in 1906: while foreign observers—like M. Gazetter Joseph Chailley—reflect the prejudices and preconceptions of their informants.

Working on the basis of a Parliamentary enactment, I had two alternative methods of treatment open to me. I might have followed Ilbert, and made this book a hand-book for the constitutional lawyers I have preferred to take the law as a background, to trace upon it the outlines of the political institutions of our country. Designed originally for the undergraduate, the book in its present form will, I venture to think, be of use to a wider world of students of India. It has been my constant endeavour to discuss each question scientifically; it was inevitable, therefore, to take into consideration the important aspect of each controversial point. And though on many questions I have not hesitated to pronounce an opinion, I have on many other points refrained from pronouncing for obvious reasons of uncertainty in the question itself, or incompetency of the author. I may only add that the purpose of this book should not be misunderstood, because, here and there, its outward form or some stray expression might lend itself to misconstruction.

The second edition of this work has been delayed owing to my being occupied incessantly with other and more urgent work. It might, perhaps, never have made its appearance, but for the kind offer of help made by Miss Bahadurji. The help she rendered in preparing and re-writing portions of the work has been so great that she is as much the author of it as he who first wrote it. Expressions of opinion are in every instance those of the original writer, who is, and must be, responsible exclusively for them. He alone is censurable for

any faults the work displays to the careful eye of a critical reader ; while the improvements in the work, such as they are, must be credited to the colleague, who has done her best to make the work fuller and rounder than before. I could have thanked her in conventional terms, did I feel my obligations less strongly. As it is, I simply have to acknowledge her the joint author, but the exclusive improver, of this work.

February 1924.

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Other Works by Prof. K. T. Shah.

Sixty Years of Indian Finance.

Trade, Tariffs and Transport in India.

Indian Currency, Exchange and Banking.

Guide to the Study of Indian Administration.

Wealth of India (*In the Press*).

The Indian Iron and Steel Industry, (*a Pamphlet*).

**Memorandum on Public Expenditure in India to the Indian
Retrenchment Committee, (*a Pamphlet*).**

CHAPTER I.

The British Parliament, and the Government of India.

—(o)—

Government of India Act,

[5 & 6 Geo, 5, ch. 61; 6 & 7 Geo, 5, ch. 37;
and 9 & 10, Geo, 5, ch. 101.]

An Act to consolidate enactments relating to the Government of India.

CONSOLIDATED ACT.

Government of India Acts (1915-19.) Consolidated.

Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration and for the gradual development of Self-Governing institutions with a view to the progressive realisation of Responsible Government in British India as an integral part of the Empire: and

Whereas progress in giving effect to this policy can only be achieved by successive stages and it is expedient that substantial steps in this direction should now be taken: and

Whereas the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples: and

Whereas the action of Parliament in such matters must be guided by co-operation received from those on whom new opportunities of service will be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility: and

Whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by the latter of its own responsibilities:

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament Assembled, and by the authority of the same, follows:-

1. The Crown.

The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King-Emperor of India, and all rights which if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the Government of India.

The foregoing preamble to the constitution of India does not make any radical change in the basis of the Governance of this country. It presupposes, as ever before in the British era, that:—

(1) India shall remain an integral part of the British Empire, and accordingly have the character and scope of her political development in harmony with the fundamental principles of that Empire. The British Empire is, indeed, an Empire in name only, since the principal constituents are autonomous units, who owe but a faint allegiance to the nominal sovereign of the Empire. The only uniting links between these mutually independent states that make up the British Empire are:—(a) the British Crown, and (b) the centralised direction of the foreign policy of the Empire. But the first has no living importance upon the actual problems or details of the administration or Government of the Empire. The respect or veneration for the crown in the outlying parts of the Empire is due to the absence of the personal wearer of the crown for the time being. And as for (b), murmurs of discontent against the undue centralisation in the conduct of the Foreign Affairs of the Empire are not even now unheard. The Anglo-Japanese alliance for offence and defence was negatived in 1921, because the self-governing dominions were against it; and Canada at least has secured the right that in treaties with foreign states materially affecting the economic development of a Dominion, the representatives of that Dominion will be consulted and associated with the negotiation and conclusion of such treaties.* The unison of the

*Cp. "The Imperial constitution and the Imperial Conference," by Prof. Berriedale Keith in the *Edinburgh Review* for July 1923.

constituent states of the British Empire is thus exceedingly slight. Nevertheless the absence of complete autonomy in the Government of India, makes it impossible to say that the Indian people are free to work out by themselves their own political destiny.

(2) The British Parliament remains, as it has been since the Regulating Act, trustee and guardian for the people of India. While the people of India were a helpless prey in the hands of a foreign bureaucracy exclusively enjoying the powers of Government, the doctrine of trusteeship of the British Parliament may have had some justification in the sentiment of international morality, though it may be doubted if even then the duties and obligations incidental to the trust could have been effectively discharged in the circumstances of the case. But with the emergence of the Indian people from the stage of absolute ignorance and helplessness, the doctrine of trusteeship by a foreign body becomes increasingly difficult to maintain; while its inherent inconsistency could not have been more clearly demonstrated than by the provision in the preamble that:

(3) The stages of progress on the road to complete autonomy will be determined at the exclusive direction of the trustee, —the British Parliament. No limit is fixed, no distinct condition laid down, for the termination of the trust. Should the interests of the beneficiaries under the trust conflict with those of the trustee, there is no means to make the trustee abdicate its authority which has become no longer acceptable.

(4) The only contribution, then, of the Reforming Act of 1919, towards the promotion of responsible Government in India, is the measure of partial Responsibility introduced in the form of dyarchy in Provincial Governments. The ideal of full responsible Government for India is to be achieved—not all at once, but by stages determined at the discretion of the British Parliament, and conditioned by the

satisfactory co-operation received from the Indian people in working the new constitution.' As the first stage on the road to full responsible Government, the provinces are made independent of the Government of India, and partially responsible to the people of the provinces, both as far as consistent with the final responsibility of the Government of India to the British Parliament.

II. The Growth of Parliamentary Sovereignty over India.

The East India Company was in its origin a creature of the Royal Prerogative, and as such dependent upon the good-will of the Executive for all its powers. "By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought into question," says the Charter of Queen Elizabeth, the East India Company is constituted and its powers determined. Under the immediate successors of Elizabeth those who depended for their existence on the Royal Prerogative had some very great hardships to face; for the first half of the XVII century was marked in England by the great struggle between the Crown and Parliament for ultimate supremacy which did not end with the execution of the King. Though the legality of the monopolies granted by Royal Prerogative was questioned under Elizabeth herself, and still more seriously under her immediate successor, the East India Company continued to be a creature of the Crown, or rather of the executive authority. Even when the Civil War had ended in the death of Charles I, and the establishment of the Protectorate, the position of the Company remained unaffected in this respect. The Protector, appreciating the value of the Eastern trade, and recognising the utility of the Company, lent them his strong support in their quarrels with their European rivals in the East. Thus in 1654, by the

Treaty of Westminster, he forced the Dutch to pay the Company a compensation of £ 85,000 for the massacre of Amboyna, and for their exclusion from the trade of the Spice Islands. Like his Royal predecessors, and his later Parliamentary successor, Cromwell did not give his aid for nothing ; this very sum of £ 85,000 not being easy to be apportioned among the several joint stocks of which the capital of the Company consisted, Cromwell "borrowed" £ 50,000, pending the settlement. He extended the prestige of the Company by another Charter from himself incorporating a rival association with the East India Company. During the Restoration the position of the Company was quite satisfactory. Charter followed Charter in quick succession, each more lavish than the preceding in increasing the powers of the Company.

After the Revolution of 1688, however, the situation of the Company became very critical. On the throne was a king who had not forgotten his Dutch origin because he was made a king of England by a successful Revolution ; and who could not help looking with a favourable eye on the Dutch rivals of the English Company. Moreover, the then head of the Company, Sir Josiah Child, had identified himself and his Company far too much with the Stuart cause to be a *persona grata* with the ministers of William III. In the closing years of the XVII century the privileges of the Company were menaced by the growth of a New Company, which was encouraged by the ministers of the Crown, and which was given valuable rights by Acts of Parliament and Royal Charters. Though the Old Company managed to render nugatory, or at least innocuous the privileges of their rivals by buying up a great portion of the stock of the latter, the situation became more critical than before, as the promoters of the New Company found their rights almost valueless to themselves. A coalition between the two Companies was the only means to remedy the situation ; and it was effected by the intervention of Lord Godolphin in 1702. Further difficulties appeared in carrying out the arrangements of 1702. At last, therefore, an Act was passed in 1707, by which

the New Company was required to advance to the Crown an additional loan of £ 1,200,000 without interest. In consideration of this the Company's exclusive privileges were continued till 1726; and Godolphin was empowered to settle the outstanding differences between the two Companies. Accordingly Lord Godolphin gave an Award in 1708, and in the following year the Old Company surrendered all its charters and its separate existence came to an end. The original Charter of the New or the English Company became the source of all the powers of the Company,—the United Company,—and it remained unaltered upto the end of the Company in 1858, except by Acts of Parliament.

Though the sovereignty of Parliament was thus asserted as early as the beginning of the XVIII century, the first real attempt to regulate the government of the Company *in India* by Acts of the Parliament did not come till more than two generations after. The acquisition by the Company of the Civil Administration of Bengal in 1756, and their constant engagement in wars in India had so completely changed their original character of traders, as determined by charters and Acts of Parliament, that the need for a wholesale revision of the powers and duties of the Company could no longer be ignored. Even so the reform might have been yet further delayed had it not been for the financial necessities of the Company. When they applied to the Treasury to advance them a loan, the Government of Lord North took the opportunity to revise the constitution of the Company by an Act of Parliament. The Regulating Act was the result; and for the first time the Government of the East India Company, both in England and in India, came to be regulated in all its entirety by an Act of Parliament. The principle seems to be from this time unquestionably established that **all changes in the structure of the Government in India as well as in England can only be made by an Act of Parliament.** The entire control of the Government in this country cannot, it would seem, be said to be under the sovereignty of Parliament from 1773. But even this doubt was removed by the Act of 1784, by which a Board of Control was established to

superintend and control the affairs of India, and the President of which became responsible to Parliament. Even after the Act of 1784, though there was a regular machinery for the exercise of Parliamentary control, the authority of the Board and therefore of the Parliament, was not the only authority concerned with the administration of India. The Court of Directors of the Company were still left considerable power, and very frequently it became exceedingly difficult to locate the responsibility for a particular Act of the Government of India, as for instance in the first Afghan War. This situation was at last remedied by the transfer of the Government of India to the Crown in 1858, when a Secretary of State was made solely responsible to Parliament for the Government of India, and was given power to superintend, control and direct the Government of India.

III. Nature and Extent of Parliamentary Sovereignty over India.

In the theory of the law, Government by the Crown means Government by the British Parliament. In common with all the parts of the British Empire, the legal Sovereign of India is the King-in-Parliament. The English system of constitutional monarchy, which is supposed not only to solve the problem of the monarchy in a democratic environment, but is also believed to hold together the so-called British Commonwealth of Nations, works in practice in a way calculated most artistically to bewilder an unwary student. It is only recently,—since 1917, to be precise—that the problem of reconciling the local autonomy of the constituent members of the British commonwealth of nations with the unity of the whole Imperial organisation has come to the fore. We shall have occasion to examine this question more in detail later on. Confining ourselves here to the historically earlier question of autocracy in

name *versus* democracy in fact, it must be noticed that, though in theory the King is still the supreme ruler "by grace of God, of the United Kingdom, its dominions beyond the seas and the Empire of India*", in practice the position of the British king "by Act of Parliament" is pretty generally and specifically limited. There is, indeed, still a considerable margin of debatable land between the known, specific, statutory powers of the King as the first Magistrate and the titular head of the commonwealth, and the vague, indefinite, unknown and conventional powers assigned to or enjoyed by him. It would make an inexcusable digression were we to enter here on a full description of the known and unknown spheres of the British constitution. It is enough for our purposes to note that a good deal must necessarily depend, in so far as there is a debatable land of indefinite convention, upon the personality of the sovereign of the day. There is, however, this difference between the sovereignty of the King-in-Parliament in the Self-Governing colonies and in India:—that while in the Self-Governing colonies the delegation by the Imperial Parliament of legislative independence has gone so far that Parliament seldom interferes in the domestic affairs of, or legislates directly for, those colonies; in India, on the other hand, though there is no doubt a certain amount of delegation of legislative authority, the right of the British Parliament to legislate directly for British India is more than nominal. It is true India has a constitution granted by Parliament—a constitution which is codified by the present Consolidating Act; but in spite of some delegation of legislative autonomy, Parliament still retains a

*The full title of the King Emperor is:—His Most Excellent Majesty George The Fifth, by the Grace of God King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Defender of the Faith, Emperor of India. In these terms the phrase by Grace of God ought more accurately to be "by Act of Parliament," which also conferred the title of the Emperor of India in 1876. The term "Defender of the Faith" was bestowed on Henry VIII. by the Pope while that monarch was still a Catholic. It is retained in the official title of the King, though it has long ceased to have its original meaning, just as the similar title of "Daulat-i-Inglesia" (Wealth of the English) is retained in the official style of one of the Indian rulers.

considerable field for legislation relating to India in which its authority is supreme and is frequently directly felt.

As regards the entity known as King-in-Parliament, he works with the aid of a ministry or Government, the head and principal members of which are elected by a sort of indirect election by the representatives of the people. Ministries in Britain must be chosen from that party in the House of Commons which has a majority for the time being. The King, indeed, so selects only the Prime Minister. But the latter, in his turn, selects his principal colleagues, whose names are submitted for formal approval to the Sovereign. Under a well-known convention of the constitution these ministers collectively,—as well as individually—must possess the confidence of Parliament, which in practice has now come to mean only the House of Commons. The confidence is usually manifested by assenting to the legislative measures of public importance submitted by the ministry for sanction and passing by parliament; by the approval, when questioned, of the administrative acts and executive policies in Home or Foreign affairs, of the ministry; and by the supply of funds for carrying out the administrative work of the nation. This last is supposed to be the key-stone of the arch of constitutional Government,—the so-called Power of the Purse. Its compliment in administration is to be found in the ultimate power of Parliament to pass or refuse the Army Act—which is the ultimate means of keeping intact the administrative machine; and which, by a convention of the constitution, is submitted annually to Parliament. A ministry unacceptable to Parliament can thus be brought to heel by one of two means, by the refusal of supplies, or the more drastic step of refusing to pass the the Army Act. It may be that the Parliament itself may be out of touch with the people it represents. As the moral authority of Parliament ultimately rests upon the popular will it is supposed to represent, the Parliament may be dissolved if it be considered to be lacking in public sympathy. Its own creature—the Ministry—can annihilate it. But if its successor, the

new Parliament, does not approve of the Ministry, the latter must yield or resign. This is in effect the actual working of the King-in-Parliament. Its connection with the outlying parts of the Empire is slight, but still noteworthy.

As regards the influence of the British Parliament on Indian affairs, we may note:—(1) Parliament alone is competent to make any changes in, or pass any new law in place of, the existing constitution of India, including the Imperial and the provincial governments. (2) The same authority alone can pass, amend, or alter any law affecting India and any other Dominion of the Empire, as also (3) India and any foreign powers with which the Government of India is not empowered to deal directly. On the other hand (4) international agreements, brought about under the aegis of the League of Nations for example, which, to be effective, have to be embodied in special legislation by each contracting country, *e. g.* the control of the Opium Traffic, or immoral traffic in women, arbitration of disputes in international trade of private citizens, or public corporations, may all be legislated for by the central legislature of the Empire; but, owing to the direct representation of the principal Dominions and India on the League of Nations, these subjects are now dealt with separately by each Dominion Legislature on the pattern of the central legislation. Finally, under S. 65, which defines the powers of the Indian Legislature, certain subjects are definitely excluded from the cognisance of either the Central or any of the Provincial legislatures in India.

Incidentally, it may also be added here, that the institution of the League of Nations does not in any way affect the complete internal sovereignty of each nation becoming member of the League. Though formed to end all warfare between the peoples of the world, it has not yet been vested with the supreme powers of policing the world and adjudicating upon its public and private disputes with a view to avoid the use of force. It still exists on the sufferance of its constituents. It lacks some very important constituents—like Germany or the

United States,—without whom its pretension to be a world council cannot be admitted, and its authority must necessarily be impaired in proportion. And it has yet no powers of direct action, either by legislation or by executive decrees; so that any effect that might be given to the decisions or desires of the League can only be through the individual action of its several constituents. To the enthusiastic idealist, the League may appear as the embryo of the future, full-grown, "Parliament of Man;" but judged from its actual history of four years' existence, the League is still only—a pious aspiration. *fs*

It must be noted, however, that though the sovereignty of the British Parliament over India is as complete as that over any part of the King's Dominions, the Government of India derive a substantial portion of their power from the Royal Prerogative as well as from the old Mogul Emperors of the country. (1) That the Royal Prerogative is by no means as obsolete in this country as in England or in the Self-Governing colonies—prerogatives such as legislating by Orders in Council or by Executive orders,—is evidenced by the practical repeal of the Partition of Bengal by a personal proclamation of the King-Emperor in Delhi in December 1911. Again the Royal Prerogative of Veto, which in Britain has not been used since the days of Queen Anne, is a living fact in our constitution, specifically guaranteed by a section of the Act of Parliament. [cp. particularly ss. 67 (2) a; power of certification 67 (4); Returning bills for reconsideration 67 (A) and B; and the final proviso to s. 67 B and 68 (1)] The King-Emperor, also, can, by Order in Council make important changes in the general administrative system of the country, e. g. the appointment of a High Commissioner for India, [cp. s. 29 A. of the Government of India (consolidated) Act]. (2) And that the Government of India exercise certain powers which can only be explained by their being regarded as successors of the old Mogul Emperors can be proved by many a revenue code. But when these allowances have been made, it still remains true that the general constitution of the Govern-

ment to-day, both in India and in England, has been created and regulated by Acts of Parliament. Thus the functions of the Governor-General, the powers of the local Legislatures; the constitution and jurisdiction of the several High Courts; the very existence of the Secretary of State and his Council—all alike are based upon Parliamentary enactments.

In matters outside the legislative sphere, Parliamentary supremacy is very often directly felt by the Government of India. Thus in executive matters the Foreign relations of the Government of India are almost exclusively determined by the Home Government.* And in so far as Parliament can be said to control the Foreign Policy of the Empire, the Foreign relations of India also are to that extent controlled by Parliament. Again, in matters financial, Parliament has laid down that the revenues of India may not be applied for military expeditions outside the frontiers of India without the consent of Parliament, except for preventing or repelling an actual invasion or any other sudden or urgent necessity;† that detailed accounts of Indian revenues and expenditure must be laid annually before Parliament together with a Report on the Moral and Material progress of the country.‡ In addition to all these, in accordance with constitutional usage, the Secretary of State, as Minister of the Crown, is exposed to criticism in Parliament and to a vote of censure should an occasion arise.

*The relations of the Government of India with the Indian Princes, technically also known as Foreign Relations, are conducted directly by the Government of India. But the explanation for this procedure probably is that, in the eye of International Law, the British Government has prevented the Indian States from being regarded as independent sovereign entities. Their subjects, for example when travelling outside India, are treated as British subjects. The same is the case with some border states, e.g. Afghanistan until quite recently, Nepal, Bhutan and Tibet.

†See S. 22.

‡See S. 26 as also 84A. providing for a decennial revision of the constitution.

IV. The Actual Position.

This is the position in theory. In point of fact, however, the influence of Parliament in the conduct of Indian affairs is relatively insignificant. There are various reasons why Parliament cannot interfere frequently and directly in the actual task of administration. Chief among these are the following:—

1. The British Parliament has neither the time nor the energy to superintend, much less to carry on directly, the Government of a distant dependency like India. Even at Home, the practice has recently grown up of delegating a great deal of its legislative authority to the leading departments of State or to the King-in-Council. The so-called Statutory Orders are all framed under such delegated authority; and when they are approved of or notified to Parliament, they have as great a force as any law of the realm. The intricacy and complexity of modern legislation makes it inevitable for a body of amateur legislators to rely more and more upon expert advice, both in the framing and working of those laws, reserving to itself only the power of criticism and approval. This dependence upon a subordinate authority becomes greater as the distance or dissimilarity of local conditions increases. In matters relating to India, therefore, though in the theory of the law Parliament is sovereign and is quite competent to legislate on any conceivable topic relating to this country, in point of fact, Parliament does not and cannot legislate for any and every topic. It confines itself usually to acts relating to the Political Constitution of the country, or those enabling the Secretary of State to raise moneys by loan in England.

2. The deliberate, settled policy of the statesmen of England, ever since the transference of the Government of India to the Crown, has been to keep all Indian questions outside the pale of party politics. In actual fact, here as elsewhere in the British constitution, the practice differs materially from the theory. The Secretary of State, for example, has always been a leading light of his party,—a party-man who comes to and goes

from his office along with the rest of his party. And party bias, in so far as it can be described to affect the general outlook on Imperial questions by the British government of the day, does occasionally colour the decision of grave questions of policy relating to the whole Empire. *e.g.* the rights of Imperial citizenship in the different parts of the Empire for all races of the Empire. The theory, as it stands, is often regarded as a very wise maxim; and people are not wanting who believe that India gains by it. All the same by being excluded from party programmes, Indian questions seldom receive that searching, exhaustive, almost venomous criticism from the press and platform, from the opposition in and out of Parliament, which every question included in its programme by one of the leading parties in the State habitually receives in England. And even if we believe that the exclusion from party politics is a good thing for India, it cannot but be admitted that grave questions of imperial policy, in which India is vitally concerned, will never be thoroughly discussed if India is kept out of politics so determinedly in England. Party dominates the whole field of Politics in England. Whatever their abuses, constitutional Government would be impossible in England without parties. And however sound the theory of exclusion of India from party politics may seem, so long as the supremacy of the British Parliament over India is maintained, it is futile to expect any definite solution of our constitutional questions if our country is altogether kept out of politics in future as she has been in the past. We may conceivably lose by our political problems being brought on the party programme and being made party issues in England. But it is quite certain that Indian questions would receive much greater attention, and therefore much speedier solution, if they are brought on the party programme.

3. The expedients provided for maintaining the supremacy of Parliament have, in practice, either fallen into disuse, or ended in being mere formalities. Thus for instance, Parliament has laid down definite rules as regards the employment

of the revenues of India. But such restrictions, from their very nature, are of a negative kind which can be, and have been, relaxed whenever necessary. Moreover it used to be common custom to present the finance accounts of the Government of India to Parliament towards the fag end of Parliamentary session. The members at that time are more anxious to finish up the work, and enjoy their well-earned holidays, than to raise discussions or debates on such an uninteresting and intricate topic as the finances of India. Those who have attended in the visitors' gallery of the House of Commons on days when the accounts of the Government of India were laid on the table of the House, and when they ostensibly formed the subject of discussion for the day, could not but have been surprised at the scantiness of attention paid by Members of Parliament to the well-being of the peoples of an Empire, which is described as the brightest jewel in the British Crown. Usually there are not more than half a dozen members all told in the whole House, including the Speaker and the Secretary or Under-Secretary of State who presents the accounts. The debate, if we may so dignify the proceedings, ended in a motion which amounted to saying that the accounts of the Government of India showed what they showed. Occasionally a member puts some questions which the occupant of the almost empty treasury bench may answer or brush aside. Since the Act of 1919 this position has been considerably modified. The salary of the Secretary of State for India and all the political charges of his department are paid out of the British revenues, and the British Parliament is thus given a direct interest in the matter. The opportunity is regularly provided, while the British Budget is passing through the Parliament, to bring in motions and raise debates on Indian questions; and, it must be recognised, in recent years the Indian debate in the House of Commons has been decidedly superior in tone, quality and information. But even so, it may be questioned if the real problem of the Governance of India can be solved in England.

4. Added to all these is the general ignorance, and in some

cases total incompetence, of the members of Parliament about questions relating to distant parts of the Empire which helps to perpetuate Parliamentary indifference to Indian questions. The average Member of Parliament has his hands full with questions that relate to his own constituency or to the peculiar interest he represents. Whether he is a lawyer, a merchant, a landowner, or a retired civil servant, he has very little time and interest to take up subjects in Parliament which he can have no knowledge of, especially when he has more urgent questions nearer home requiring his immediate attention. In this regard also a notable change has been made by the Act of 1919. Standing Committees of Parliament have been instituted to keep the British Parliament, informed of all matters relating to India: and this necessarily helps to create a superior standard of information relative to this country. If the British Parliament cannot even now pay any close attention to Indian administrative details, it is because of the growing complexity and variety of legislative business in Britain herself.

V. The Changing Situation and its Causes.

Of late, however, the situation as described above, has undergone some slight modification for the following reasons:—

(1) Ever since the Golden Jubilee of the late Queen in 1887, when British citizens from all over the globe assembled in London to celebrate the fiftieth anniversary of the reign of their beloved sovereign, English people began to take some direct interest in the greatness as well as in the latent power of their vast Empire. Previous to that day, the great bulk of public opinion in England regarded colonies and distant dependencies as costly luxuries, which England would lose nothing in

giving up altogether. Perhaps the charters of Self-Government to the colonies, which were such a marked feature of the nineteenth century British imperial politics, were the result of this lurking distrust—itself the child of the experience gained from the American colonies in the eighteenth century—of distant and disconnected colonies, rather than of any avowed preference for or belief in the merits of Self-Government by the colonies. Even if this were not true, it is a universally acknowledged fact that the interest of the average Britisher in the Empire on which the sun never sets was, to say the least, very slight before 1887. From that day, however, opinion has changed. The change is as far reaching in effects as it is revolutionary in character. It has been brought about by the keener realisation of the rivalry of foreign countries in the fields of trade and industry. Britain, once supreme for nearly the whole century, is already finding some of her practical monopolies threatened by the growth of new and vigorous powers like the United States of America or the old German Empire. If England is to retain her old position as the workshop, the carrier and the banker of the world, she must put forth all the efforts she is capable of. That she has resources much more vast than any of her rivals was realised for the first time when men from the different parts of the Empire met in London in 1887 to celebrate the Golden Jubilee of their common Sovereign, and to realise their common citizenship. The necessity to organise and exploit these resources, to co-ordinate and focus the efforts and energies of the whole Empire on the one task of maintaining the old supremacy made English people look closer into the problems of the Empire. Indirectly, therefore, since that date along with the colonies, India began to loom larger before the British public, not only as the most important part of the British Empire both in men and material, but also as a part whose problems were unique; and whose problems, unless they were solved satisfactorily, would prevent the closer welding together of the different parts of the Empire. The welcome that the first Indian member—Mr. Dadabhai Naoroji—met with in the British Parliament in 1892 was but an indication of the

realisation of its imperial responsibility by the British Legislature.

(2) There are other factors also which have helped to increase in recent years Parliamentary attention to Indian questions. Among these, we may reckon as the chief the growing class of the retired servants of the Government of India in England, who cannot forget the fields of their early triumphs or griefs, and whose efforts, therefore, result in attracting more and more attention every day to Indian questions. Whatever side they adopt, whether in Parliament like the late Sir Henry Cotton, or in the Press, or as authors of more permanent literature relating to India, they all serve in their own several ways the land where their prime of manhood was passed. While this class of retired Anglo-Indian officials provides information relating to Indian problems, there is steadily growing up another class of English Members of Parliament who come to the same questions from altogether different motives, and who view these questions from altogether a different stand-point. Elected by the public who look upon him as their own special deputy to the Imperial Parliament, the average M. P. is, however, shut out, by the growth of the party system, altogether from any chance of winning distinction in domestic politics. The field of domestic politics, in which the constituents are directly interested, is dominated, almost exclusively, by the towering personalities of the party leaders in England. If the average Member of Parliament has any ambition to be known to the constituency—if he has any idea to rise one day to the ministerial or cabinet rank, he must find some other fields of activity—new as well as useful—which he should make it his task to make interesting to his leaders, and even to the British electorate. These fields of activity are supplied by the outlying parts of the Empire, chief among which is India, who is entirely voiceless in the supreme council of the Empire. Her interests, therefore, may well be championed, not without hope of profit to themselves, by this class of aspiring Members of Parliament. They receive not only considerable encouragement by the frequent demonstrations of gratitude by the peoples of India,

but substantial help from those educated Indians who are visiting England for profit or pleasure or education in greater and greater numbers every year. Facilities in the means of communication have not only resulted in bringing the different parts of the Empire together; they have made interchange of views and the combination of effort through the identity of interest much more feasible.

Hence at the present day, the interest taken in Indian questions by the British Parliament, as well as by the English public, is appreciably greater than ten years ago. There is no doubt a great deal of ignorance or indifference still prevailing among the average Members of Parliament on Indian questions. And there is still a much greater ignorance on these matters among the British public at large. It is also true that in some cases, and notably in some economic questions, the interests of India are apparently opposed to those of England. But when all allowance has been made for these factors, it must be admitted that India is trying more and more to attract the attention of the British Parliament. It is an interesting question as to what would be the relative position of the Government of India and the British Parliament, as representative institutions are introduced in this country in ever increasing proportions, till India becomes as much a Self-Governing country as Australia or Canada. If representative institutions take a deep root in this country, and the Government of India become national in tone and in character as well as in name, their present position of complete subordination to the Government of England would be found to be impossible to maintain; and we shall cease to look for improvement from a distant, incompetent, partisan assembly, when all the improvements we desire we can effect ourselves.

VI. Means to attract Parliamentary Notice.

The realisation of the complete sovereignty of the English Parliament over India has made the problem of attracting greater and greater attention of that body to Indian questions of the utmost importance in Indian politics. It was realised long before the present aspirations for Self-Government had taken root that any change in the fundamental principles of Government in India could only come from England. In the day of the Company, when the princes and people of India had understood the real character of that body, appeals to Parliament or the Crown in England were not unknown. The impecunious Nawab of the Carnatic, for instance, even when he was defeated in a suit against the Company, could obtain a representative of the English Crown to his court, and thus frustrate many a design of Lord Wellesley (1793-99). In those days such an appeal to the ultimate source of all authority in India could, however, from the very nature of the case, be within the means of a very small section of the community in this country. With the transfer of the Government to the Crown, even this thin screen of independent authority vanished; and the governing authorities in India stood out directly as the servants of the British Crown, and as such under the control of the British Parliament. As education made progress among the people of India; as the ideals of Government cherished by the English people and taught by the English history began to be assimilated; and as the true position of the powers in India came to be fully realised, organised efforts were set afoot to reach at the very fountain-head, and there seek a change in the basic principles of government in this country.

‘The earliest and the most important of these efforts,—one not altogether abandoned,—was to try and educate the English public into a sense of India’s growing need to meet which the established authorities of Government in India were alike unable and incompetent by their training, their temperament, and their general environment. With this view an organ of the

advanced Indian opinion was established, and representative Indians were often sent to England to rouse the public in that country. This method, though intrinsically sound, could only yield results after a length of time. Besides, it was not impossible to misinterpret the object of such an agitation in sympathy with the corresponding agitation in India. The aim of such an activity was not, and could not have been, to induce Parliament to interfere in the details of administration in India: Parliament could not, from the nature of the case, interfere without belittling itself. What was desired was to induce Parliament to make such a radical alteration in the maxims of Government as would be more in harmony with the changed conditions of India, and as would save it from all subsequent appeal for reform in details. The very magnitude of such a demand could not but require time to be accomplished. Those who have constituted themselves the guardians of the welfare of so many of their fellow-creatures cannot but hesitate before acceding to a change which, while absolving them from all further liability and responsibility, might not bring the promised improvement in the task. Until Parliament,—or rather the English public,—is convinced that the change desired is both salutary and feasible, it could not abdicate its authority without being false to itself. The clearest and the most conclusive evidence must therefore be laid before Parliament before such an alteration can be expected; and to do that time would have to be allowed.

Perhaps it was thought to be one form of this evidence, that Indians should seek election for a seat in the British Parliament; and from their seat in that house, and by their work in that assembly, convince the people of England of the fitness of the sons of India to govern their own country. So far three successful attempts of this kind have been made. These gentlemen were elected by English constituencies; and their presence in the House of Commons served to attract the attention of Parliament to Indian questions. But it would be a mistake to see in this success a solution of India's present

aspirations. It is neither possible nor practicable to obtain the real self-government for India by seeking a direct representation in the British Parliament. Even if the Indian members sat as the representatives of Indian constituencies, and not—like these three gentlemen—as representatives of English constituencies, their position in that body can never be so important as to assure a real popular government for Indians in India from Whitehall. For one thing, the experience of the English people of such members for Ireland is not exactly encouraging enough to induce them to try a second venture in the same direction. Such members, doomed to a perpetual minority, and anxious to achieve a particular object, can only end by becoming mercenaries, selling their votes to whoever promised the speediest accomplishment of their object. They would be in a perpetual minority, because it is hopeless to expect that in an English legislative body representation could ever be given to India on the basis of her population. Like the Irish members before them, such members from India, if they ever come into existence, could only hope to achieve their aim by trying to hold the balance between the parties in England. And even then their success is not quite secure; for they must give priority to the business nearer home,—or else they would not get the support of any party in England. If they do so it is just possible, that their allies of a while ago might find unexpected difficulties in fulfilling the bargain, not for any want of good faith on their part,—though such infidelities are not unknown in politics,—but because they did not rightly gauge the strength of public opinion in England in favour of such a change. Neither England nor India can expect much from such a makebelieve, mercenary, solution of the difficulties of this country.

The expedient of placing the salary of the Secretary of State for India and the charges of his establishment on the revenues of England was often suggested as the surest means of attracting the attention of the English Parliament to the affairs of India. As to the justice of such an arrangement nothing can be said against it. Not only does the analogy of the colonies suggest

it; but the share that India has borne in the defence of the Empire, for a longer period and to a much greater amount than any of the colonies,—makes it but a simple act of justice, all the more graceful on the part of England, because the burden would not be very great for England. • The charges of the India Office do not exceed half a million sterling, while India has been contributing over 20 million sterling every year for maintaining an army which can be of service,—and has been of service in any part of the Empire. While the annual revenues of England are nearly 200 million sterling, those of India are much under a hundred. The change, however, has now been accomplished, and it remains to be seen how far the actuality tallies with expectations. The mere opportunity to Parliament to discuss, once a year, the expenses of the India Office, may, for all we know, be entirely inadequate to afford a permanent solution of all the problems of India. Such a change might bring Indian questions into the turmoil of British political parties; and the inclusion of India on the party programme in England may not prove an unmixed blessing to India. Any desire in the minds of Indians to figure on the party programme in England, any co-operation with any political party in England, is due to the belief that by so doing the ultimate goal may be reached the sooner. That goal can never be anything else but this : that the real Government of India should be in India responsible to the people of India. And so, though the suggestion under consideration may be an excellent one to realise that goal, it should never be confounded with the aim itself.

If the real object of the agitation in India is not lost sight of, there would be no difficulty in understanding at their proper value such other suggestions as that the India Council should be abolished. At best it is a matter of detail. As it stands to-day the India Council is of very little importance in the administration of India; but its real, original object was to serve as brake on the autoeracy of the Secretary of State. To abolish it altogether is to remove this one check, however ineffective, on the absolutism

of the Secretary of State. On the other hand the proposal that the India Council should be composed of the elected representatives of India would be useless, unless the powers of the Council are increased, and its decisions by majority are made binding upon the Secretary of State on all matters without exception. In the absence of such provisions the India members will always have the mortification of being overruled by a man who knows nothing of the questions at issue. A frequent disregard of the wishes of the Council is sure to cause discontent in India if it ever comes to be known. Besides, if the powers of the Council are increased in this way, the real goal might be lost sight of. The effective powers of no authority in England, however constituted, should be increased at the cost of the authorities in India, if our ultimate goal is self-government in India.

In appraising all these suggestions it must be remembered that the Parliament of England can never interfere, with credit to itself and benefit to India, in the actual details of administration in India. What we want of that body, and what may justly be expected of it, if not as a price of our loyalty as a proof of her appreciation, is to abandon altogether the principles which have so far governed the Empire of India. Time was when the only champion of the Indian people was an independent, private Member of Parliament,—a Burke, a Wilberforce, a Bradlaugh. Time was when the Minister of State for India in England could well be regarded as the real and the only democratic check on the otherwise unlimited autocracy of the Indian Government,—a Canning, a Charles Wood, a Ripon. Time was when the average educated Englishman—of the type of the ordinary Civilian in India,—might be deemed more fit to govern in India than his fellow-subjects of Indian birth. His education was more liberal, his experience undoubtedly greater, his neutrality among the religion-divided peoples of India quite probable. But that day has now passed away. The English Parliament, busy with its own immediate problems, cannot play for ever the guardian of the welfare of the Indian people. It has confessed its inability to do so in the case of the colonies

planted by Englishmen, and where consequently the problems of Government could not be utterly dissimilar to the local problems of England. It cannot expect us to believe in its competency to go on being the guardian of India, when we are separated from her by thousands of miles, every one of which could give a reason for granting autonomy to India. For with the real problems of India, with our widowed virgins and our untouchable pariah, Parliament is utterly, fundamentally incompetent to deal. And perhaps that is why they never have been approached. The Secretary of State has ceased to be the democratic check that he was meant to be on the absolutism in India, and has ended by becoming the President of narrowest oligarchy, all the more incompetent to deal with the daily newer and more complex problems of India, because the men who compose it have had experience of India as it was 25 years ago. They will maintain themselves to be right with all the dogmatism of out-of-date experts. Even the young English Civilian, actually on the spot in India, and in daily touch with all the complex problems of Indian life, cannot now claim to be a better ruler than his Indian compeer. For his one great claim to superiority is gone or is fast going. As educated India learns the wisdom of religious toleration, his supposed impartiality amidst the warring creeds of India is useless. Education and experience are no longer his monopolies as they used to be. A trial of innate ability owns no unquestioned superiority of the English over the Indian, while his sympathy with his surroundings can never equal that of his Indian colleague.

The myriad problems of India must be and can be solved only by the Indians in India. Strangers to Indian life and sentiment, animated with the nobler motives which have governed the best of Englishmen in India, may be efficient rulers, may even be good rulers—so long as the functions of the State are no more than those of a policeman. Change the ideal of the State, and no one people could govern another, especially those so utterly dissimilar in their habits and sentiments as the Indians and the English. Indians, when they come to rule in

India, may quite conceivably be no better policemen than the English—perhaps no better engineers, financiers, diplomats, lawyers, or soldiers. But they are bound to be,—in spite of themselves, in spite of their history,—immeasurably superior in all those subtle, indescribable attributes, which go to make good government as against efficient government, which help to uplift an entire people.

CHAPTER II.

The Secretary of State.

2. (1) Subject to the provisions of this Act, the Secretary of State has and performs all such or the like powers and duties relating to the Government, or revenues of India, and has all such or the like powers over all officers appointed or continued under this Act, as if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the Affairs of India, in relation to that Government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

(2) In particular, the Secretary of State may, subject to the provisions of this Act or rules made thereunder, superintend, direct and control all acts, operations and concerns which relate to the Government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

(3) The salary of the Secretary of State shall be paid out of moneys provided by Parliament, and the salaries of his under-secretaries and any other expenses of his department may be paid out of the revenues of India, or out of moneys provided by Parliament.

The Council of India.

3. (1) The Council of India shall consist of such number of members, not less than eight and not more than twelve, as the Secretary of State may determine: provided that the Council as constituted at the time of the passing of the Government of India Act, 1919, shall not be affected by this provision, but no fresh appointment or reappointment thereto shall be made in excess of the maximum prescribed for this provision.

(2) The right of filling any vacancy in the Council shall be vested in the Secretary of State.

(3) Unless at the time of an appointment, to fill a vacancy in the Council one-half of the then existing members of the Council, are persons who have served or resided in India for at least ten years, and have not last left India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the Council shall hold office except as by this section provided, for a term of five years : provided that the tenure of office of any person who is a member of the Council at the time of the passing of the Government of India Act, 1919, shall be the same as though that act had not been passed.

(5) The Secretary of State may, for special reasons of public advantage, reappoint for a further term of five years any member of the Council whose term of office has expired. In any such case the reasons for the reappointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the Council shall not be capable of reappointment.

(6) Any member of the Council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the Council.

(7) Any member of the Council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There shall be paid to each member of the Council of India the annual salary of twelve hundred pounds : Provided that any member of the Council who was at the time of his appointment domiciled in India shall receive, in addition to the salary hereby provided, an annual subsistence allowance of six hundred pounds.

Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.

(9) Notwithstanding anything in any act or rule, where any person in the service of the Crown in India is appointed a member of the Council before the completion of the period of such service required to entitle him to a pension or annuity, his service as such member shall, for the purpose of any pension or annuity which would have been payable to him on completion of such period, be reckoned as service under the Crown in India whilst resident in India.

4. No member of the Council of India shall be capable of sitting or voting in Parliament.

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India.

6. (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the Council at which such number of members are present as may be prescribed by general directions of the Secretary of State.

(2) The Council may act notwithstanding any vacancy in their number.

7. (1) The Secretary of State shall be the President of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the Council to be Vice-President thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the Council the Secretary of State, or in his absence the Vice-President, if present, or in the absence of both of them, one of the members of the Council, chosen by the members present at the meeting, shall preside.

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every month,

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at the meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

(2) In case of an equality of votes at any meeting of the Council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at the meeting of the Council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the Council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may require that his opinion and any reasons for it that he has stated at the meeting, be also entered in like manner.

10. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which the business of the Secretary of State in Council or the Council of India shall be transacted, and any order made or act done in accordance with such direction shall, subject to the provisions of this Act, be treated as being an order of the Secretary of State in Council.

11. Subject to the provisions of this Act the procedure for sending of orders and communications to India, and in general for correspondence between the Secretary of State and the Governor-General in Council or any local government shall be such as may be prescribed by order of the Secretary of State in Council.

12. *Omitted.*

13. *Omitted.*

14. *Omitted.*

15. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next sitting of Parliament.

16. *Omitted.*

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of persons on that establishment, except by an Order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18. His Majesty may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any secretary, officer, or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representative of such persons, under the laws for the time being in force concerning superannuation and other allowances to persons having held civil offices in public service or to personal representatives of such persons.

19. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or the East India Company.

19. A. The Secretary of State in Council may, notwithstanding anything in this Act, by rule regulate and restrict the exercise of the powers of superin-

tendence, direction and control, vested in the Secretary of State and the Secretary of State in Council by this Act, or other wise, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India. Act, 1919.

Before any rules are made under this section relating to subjects other than transferred subjects, the rules proposed to be made shall be laid in draft before both Houses of Parliament, and such rules shall not be made unless both Houses by resolution approve the draft either without modification or addition, or with modifications or additions to which both Houses agree, but upon such approval being given, the Secretary of State in Council may make such rules in the form in which they have been approved, and such rules on being so made shall be of full force and effect.

Any rules relating to transferred subjects made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the rules are laid before it praying that the rules or any of them may be annulled, His Majesty in Council may annul the rules or any of them, and those rules shall thenceforth be void but without prejudice to the validity of anything previously done thereunder.

The Secretary of State for India is the direct descendant of the Board of Control, and in matters relating to India has all the powers of the Board of Control, the Court of Directors, their Secret Committee and the Court of Proprietors. He is the constitutional adviser of the Crown in all questions relating to India, and has the power of giving orders to every officer of the Crown in India, including the Governor-General. In the rare cases, however, when His Majesty, the King-Emperor, is present in India in person, the Secretary of State is his sole constitutional adviser. The Viceroy in those circumstances is only the Governor-General; but his intimate knowledge of Indian problems entitles him to become the immediate adviser of the King more even than the Secretary of State.

We might quote an example from modern history. When the King-Emperor, by a Royal Proclamation, ordered the repeal of the Partition of Bengal, on his visit to India in 1911, he was acting more under the influence of the Governor-General than on the advice of his Secretary of State, who was consulted at a later stage.

The Secretary of State for India is appointed, like the other Secretaries of State in England, by the delivery of the Seals of office. In passing it may be noticed, as a curiosity of the English constitution, that the office of the Secretary of State is a unit in the theory of the constitutional law of England, though there are really five Secretaries of State. Hence in speaking rather abruptly in S. I. of the Secretary of State, the Act does not in any way further specify or describe him, since any Secretary of State is theoretically capable of discharging the duties of any other. Such division of work as there is in the English Secretariat is solely for the sake of administrative convenience, and has no reference to any corresponding distinction in point of law. The Secretary of State for India, however, enjoys powers and position not exactly identical with those of his colleagues. In certain matters relating to his department, he is not the absolute master like other Secretaries of State; he must act in consultation with his Council. But on the other hand his salary was, until 1919, paid not out of the revenues of England, but out of those of India, which made him enjoy almost unrestricted freedom, because Parliament, not entitled to vote his salary, scarcely concerned itself with his actions. Recently, however, by the Government of India Act 1919 to be precise, it has been provided that his salary shall be paid out of the moneys provided by Parliament, and the salaries of his Under-Secretary and any other expenses of his department may be paid out of the revenues of India or out of moneys provided by the Parliament. This is a most noteworthy and welcome change. Upto now the debates in Parliament on Indian

questions had been as scanty in attendance of members as they were barren in results. Owing to the vast mass of business nearer home, and the ignorance of its members on Indian questions, Parliament had given so far the fullest latitude to the Secretary of State in the administration of India. But now since it will have to vote his salary and part of the expenses of his department, we may reasonably expect the British Parliament to take a keener interest in Indian affairs. Parliament appoints at the beginning of each session a standing committee on Indian affairs, with members from either House, which will thus keep the supreme Imperial Legislature amply supplied with information on Indian questions which the members may employ to advantage at the annual debate. One point might be emphasised here. If the standing committee is properly to discharge its functions of a grand inquest, it must have access to any papers and documents it desires to see, and power to examine any officer including the Secretary of State himself. The first Joint Standing Committee on Indian affairs was set up by Parliament in 1921 consisting of nine members from each house. The experiment is still in its earliest stage, and therefore it is premature to speculate on the advantages accruing from the proper development of such a body.

All the charges in connection with the India Office expenses had, upto recently, been paid out of the Indian Treasury. By the Government of India Act, 1919, however, they have been divided under two heads. The agency business and the commercial transactions undertaken by the India Office on behalf of the Government of India, have been separated from the political charges. The former are to be handed over to a High Commissioner for India appointed under S. 29 A by His Majesty by an Order in Council. As at present arranged, the High Commissioner is to be an officer of the Government of India, under their orders, and entrusted with all the agency work hitherto carried on in the India Office, including purchase of stores, payment of pensions, and supervision of

Indian students abroad. But he is not quite like the High Commissioners for the Self-governing colonies; for they, besides superintending emigration from the mother country to the colonies, and doing the colony's agency work, act really as ambassadors from one equal power to another, represent the colonial point of view to the British Cabinet, and even negotiate treaties with independent states with only the nominal intervention of the British Foreign Office. To illustrate the last point:—When Canada negotiated a treaty with the United States, it was the High Commissioner that arranged and settled the terms. The Foreign Office was only asked its sanction at the final stage, and had to ratify the treaty. The High Commissioner for India has none of these functions to discharge, nor their resultant importance.

The salary of the High Commissioner, and the charges of his office, are to be paid out of the revenues of India, and all the other charges of the India Office are to be borne by the British Exchequer. But as the transfer of all the functions intended to be made over by the India Office to the High Commissioner is bound to take a long time, the charges have been roughly estimated, and a sum of £136,500 is charged upon the British revenues for five years from 1921. This includes the salary of the Secretary of State and his Parliamentary Under-Secretary, as well as an amount of £40,000 which the Welby Commission on Indian expenditure had recommended should be charged upon the British revenues. The salary of the Secretary of State is £5,000 per annum, that of the permanent Under-Secretary, and Parliamentary Under-Secretary £3,000, and £1,500 respectively. These are relatively high salaries. The most important officer in England, the Prime Minister, draws a salary of £5,000 per annum, whereas the highest officer of the crown in India, the Viceroy, draws an annual salary of Rs. 256,000 = £17,666, some of the Governors, Rs. 120,000, = £8,000 and members of the Governor-General's Executive Council Rs. 80,000 per annum = £5,333. But these disproportionately high salaries are

justified on the ground that if India is to have the services of the best of Britain's sons, she must be prepared to pay a high price.

II. Powers of the Secretary of State.

The Secretary of State has the power of giving orders to every officer in India including the Governor-General, and of directing all the business relating to the Government of India that is transacted in the United Kingdom. Every order or communication must be signed by him, and every despatch from India must likewise be addressed to him.

This theory is bound to be modified in proportion as responsible government develops in India, for Section 19 A of the new Act provides that the Secretary of State in Council may by rule regulate and restrict the exercise of the powers of superintendence, direction, and control, vested in the Secretary of State, and the Secretary of State in Council, in such manner as may appear necessary or expedient in order to give effect to the purposes of the Government of India Act, 1919.

As Indians get a greater and greater share in the government of their own country, and as the Government of India becomes more and more responsible to the people of India, the Secretary of State is bound to sink more and more into insignificance, until his powers become shadowy, and he himself becomes only the mouthpiece of the Government of India. In respect of the Transferred Subjects, his control would be nominal only, for the real responsibility would lie with the ministers chosen from the elected representatives of the people and responsible to them. Even in the subjects reserved for the official half of the Government the supreme

control would have to be relaxed. And hence the exact share of the Secretary of State in the administration of India be limited to the discussion of past measures, enunciation of general maxims, and approval or rejection of new departures in policy started by the Government of India, until at last even that body itself comes to be Indianised wholly, with final responsibility to the people of India.

In considering the position of the Secretary of State for India, it must always be remembered that he is primarily a member of the British Cabinet. As such his interest in his department is like the interest of all the heads of other departments, who are also members of the Cabinet, in England. It is the interest of a politician, not that of an expert who knows and loves his work. A long standing convention, never broken since the Government of India was transferred from the Company to the Crown, has laid down that the Secretary of State for India in every Cabinet should be a man who has had previously no experience of or connection with India.* He is the democratic chief to control a bureaucratic organization. His position in the Cabinet—of which he is an important member either by his social position or by his political reputation—keeps him in touch with imperial questions. While to the Cabinet he is supposed to bring the knowledge relating to the local departments of India, to the India Office he brings the wider outlook, the broader policy, of an imperial statesman. The convention which keeps India altogether out of party politics may have resulted in modifying the principles of such men as Lord Morley when they went to the India Office. But in general it must be admitted that upon the bureaucratic temper of the India Office, the Parliamentary Secretary of State serves a useful brake, as he brings in an element of democratic

* There are only two exceptions. Mr. E. S. Montagu was the Under-Secretary of State, and as such had a wide acquaintance with Indian affairs before he became the Secretary of State. Lord Sinha had been a member of the Executive Council of the Governor General, and yet he was appointed Parliamentary Under-Secretary.

responsibility.† This respect for popular opinion—towards which the permanent officials in a department are openly hostile—is all the more emphasised when we remember that the Secretary of State is not only a member of the Cabinet but also a member of the British Parliament, perhaps of the House of Commons. As such, he has to be in constant touch with public opinion. He has always to be on his guard against any criticism from his colleagues in the legislative assembly; and while answering criticism, he must keep himself open to any suggestion for reform that comes from his critics. If the Secretary of State has any ambition to rise still higher in the world of English politics, it would not do for him to ignore altogether popular opinion. The authority, it is true, of Parliament as regards the Government of India is not wide in practice, and must diminish with the growth of responsible government in India. The salary of the Secretary of State and the expenses of his department never, until lately, came before Parliament for annual sanction. But yet the very fact of his presence in a democratic legislative assembly, coupled with his close relations with a body of men whose whole career, whose entire reputation, is based upon their successful carrying out of the fundamental principles of English democracy, makes him listen to criticism even when he cannot be censured.

III. The Future of the Secretary of State.

Since Parliament is providing for the gradual development of self-governing institutions, it would be highly interesting to speculate on the future of this great personage. By section 3 of the Government of India Act, 1919, the salary of the

† One should not attach too much value to this brake, as the Secretary of State is responsible not directly to the people of India but only to the British public—as trustees on behalf of the Indian people.

Secretary of State and the expenses of his department are charged on the British Exchequer, and as such will come before Parliament for annual sanction. This will make the Secretary of State more directly responsible to the British Parliament, and to the British public, without, however, affecting the growth of responsibility of the Government of India to the people of India. For the Act of 1919 also provided that the Secretary of State is to make rules to restrict the exercise of his own powers of superintendence, direction and control. A most possible outcome of this is that the Secretary of State will become exclusively a responsible agent of the Indian people. It is also probable that he might develop into a superior kind of special ambassador from the autonomous government of India to the equally autonomous government of England—an ambassador whose function is more that of negotiating delicate points in dispute between these two bodies, than that of a departmental chief in one of the governments. Lastly, it is conceivable that he might sink so much into insignificance that Parliament might even see the necessity of abolishing his office altogether. The future will show which of these surmises is correct. For all we know, he might end by becoming a minister for imperial affairs including all autonomous parts of the Empire.

IV. The Origin of the Council of India.

The Council of India is, in a certain limited sense, the descendant of the old Court of Directors. When in 1858 the Government of India was brought directly under the Crown, a board of advisers was found to be necessary to aid the minister of the Crown in the government of India. Under the Act of 1858 it consisted of 15 members, of whom 8 were appointed by the Crown, and the remaining 7 were to be elected, in the first instance by the Court of Directors, and afterwards by

the council itself. The members were appointed to hold office during good behaviour i. e. during life ; and they could only be removed by an address of both the Houses of Parliament to the Sovereign, just like the Judges in England. In 1869 the right of appointing new members as vacancies occurred in the council was vested in the Secretary of State (32 & 33 Vict., c. 97) ; the tenure of office was also changed from life, or during good behaviour, to a term of ten years, with the power of reappointment for another five years for special reasons. Twenty years later, (52 & 53 Vict., c. 65) the vacancies as they arose need not be filled, but the Secretary of State could only appoint a new member when the number of the Councillors was reduced to ten. The number of the council was still further reduced and the term of office shortened, as well as the qualifications modified, so that in 1919 the council consisted of:

not less than ten and not more than fourteen members, appointed to hold office during a period of seven years, but re-eligible for a further term of five years for special reasons of public advantage, which must be recorded in a minute by the Secretary of State and laid before Parliament, not removable from their office during that term except by an address of both Houses of Parliament, the members to be selected from those who had either served or resided in British India for at least ten years, and who had not left India more than five years before their date of appointment.

The councillors, it may be noted, were not entitled to any pension, though by a special Act of Parliament in 1876, an exception was made in the case of Sir Henry Maine, who was given a retiring pension of £500 a year ; nor were the members of the council entitled to any compensation for the loss of office if Parliament reduced their number or otherwise dealt with the constitution of the council. The Government of

India Act, 1919, made some important changes in the constitution of the India Council, so that at the present day, the council consists of :—

- (1) Not less than *eight* and not more than *twelve* members,
- (2) appointed by the Secretary of State for India,
- (3) to hold office for *five* years,
- (4) during which term they cannot be removed from office except by an address of both Houses of Parliament, and
- (5) They are debarred from sitting and voting in Parliament.

As regards their qualifications :—

- (6) One half of the members must have served the Crown or resided in India for at least 10 years before the appointment, or been *born* in India ;
- (7) and must not have left India for more than five years before their appointment.

(8) The Secretary of State may appoint persons with professional or other special qualifications, and may extend the term of office for special reasons.

These provisions are no great advance in the liberal direction. It is true, the number of councillors has been reduced; and perhaps, the smaller membership does render the council more compact. Besides, there is a much larger Indian element. But since the fundamental idea of the reforms of 1919 is the introduction of responsibility in the Indian Legislatures; and the consequent devolution in authority, the requirement of intimate acquaintance with Indian questions in these statutory advisers of the Secretary of State becomes relatively insignificant. It is possible that this reduction in the council is a first step towards its ultimate abolition, and that the whole establishment may be recast, until the Secretary of State himself becomes nothing but an exalted mouth-

piece of the Government of India, and might even be replaced in the unknown course of future events by the Indian High Commissioner in England.

As regards their salaries, Section 8 of the present Act lays down that each member of the Council of India is to receive an annual salary of £1,200, and members, who, at the time of their appointment, were domiciled in India, shall receive in addition an annual subsistence allowance of £600. Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament.

This change has evoked a great deal of criticism, for though in this particular case, Parliament will have to bear this extra burden, it is a wrong principle, and we have to face its effects in the demands for overseas allowance sanctioned for the European members of the public services in India, and thereby involving a very large increment in the charges of public service in this country.

V. The Composition of the Council.

If we examine critically the qualifications required for the membership of the Council of India, we find that we can divide the members of the India Council roughly speaking into four groups. **First**, and the most important as far as numbers are concerned, is the element of the retired servants of the Crown in India, who, having risen to eminence in their several departments in the service of the Crown in India, retire to their country in the fullness of time, and are there rewarded by this position of an India Councillorship. They furnish the experience gathered during their period of service, and may be taken to represent the expert opinion when questions arise affecting their several departments. The **second** element, important as evidencing the trend of recent developments, is that of the

Indians. Since 1907, it has become possible to appoint two such persons to this council. Presumably they are there to represent the views of the Indian public on the several questions that may arise relating to Indian administration. But we have no means of judging how far their opinion carried weight with the Secretary of State since the experiment was first tried; for the minutes of the proceedings are, by an unwritten convention, not made public until fifty years later. One would like to know what opinion was pronounced by the Indian members of the Council of India on questions of grave importance like the Kenya question where the honour of India was at stake; but one can only guess at it from the speeches on the subject occasionally made by the members at a later stage, or the articles contributed by them to some journals. The *third*—by no means a negligible—element consists of successful bankers, educationists, merchants etc. who are appointed to the council to furnish it with the light of experience, the maturity of judgment, which is expected to be characteristic of these men. The *last*—and never, numerically speaking, a very important element—is the element of the experts, whom the Secretary of State is at liberty to appoint in connection with some technical departments. The council consisted, at the beginning of 1923, of the following gentlemen :—

- (1) Sir Murray Hammick (Vice-President).
- (2) Sir C. S. Bayley, G. C. I. E., K. C. S. I., I. S. O.
- (3) Sir W. D. Sheppard, K. C. I. E.
- (4) General Sir Edmund Barrow, G. C. B., G. C. S. I.
- (5) Sir James Bennett Brunyate, K. C. S. I., C. I. E.
- (6) Sahebzada Aftab Ahmed Khan.
- (7) Bhupendra Nath Basu.
- (8) F. C. Goodenough.
- (9) Sir M. M. Hogg.
- (10) Dadiba Merwanji Dalal, C. I. E. (Since resigned).
- (11) Sir W. H. Vincent.

(12) Sir Edward Albert Gait, K. C. S. I., C. I. E.

(13) Sir Benjamin Robertson.

The High Commissioner for India is now Mr. Dadiba M. Dalal. Their position as councillors or advisers of the Secretary of State is one of peculiar interest. Here is a body of men avowedly qualified to pronounce a good, reasoned opinion—perhaps the best of its kind in London—on questions relating to India. They are set up to advise a man who is as avowedly entirely ignorant of Indian questions. By an unwritten convention of the English constitution, a person appointed to be the Secretary of State is usually a man who has had previously no dealings with India. If we except men who have been reappointed Secretaries of State in two or more administrations, and if we except Sir Charles Wood and Mr. Montagu, there has never been in all these years, since the transfer of the Government to the Crown, a Secretary of State who had been previously in any way connected with Indian affairs. And yet the Secretary of State has a sufficient reserve of powers to outvote and overrule, in the most important questions concerning India, the whole of his council if need be. It has been argued that the India Council would play a more important part in the conduct of affairs in India, if the Indian element in it were more efficient and representative of Indian sentiment. It is true, the Secretary of State would not lightly disregard the opinion of men well-versed in Indian affairs; and would not like to go counter to their judgment, especially in matters where their opinion is backed by the people of India. But still if he is himself a man of strong will, with a well-defined policy of his own, he has the full authority of Parliament to disregard the wishes of the Councillors in some of the most important matters relating to India. If the India Council, therefore, is to be an important factor in the administration of India, its powers must be considerably increased, and its decisions by majority must be made binding on the Secretary of State in all those matters where he is not bound to consult his council or act on their advice. Only then will the

larger Indian element be an important factor in the council. If these excessive powers of the Secretary of State are not curtailed, if he is allowed to enjoy the right of overruling his council in so many important subjects, the result can only be discontent, bitterness, as was the case in 1878, when the Secretary of State against the wishes of the whole council enforced on India a measure like the tariff policy of the Government of India, and the councillors could only give vent to their feelings in minutes of dissent.

VI. The Secretary of State and the India Council

The Secretary of State for India under the present Act is the constitutional adviser of the Crown in all matters relating to India, and directs all business about the Government of India transacted in the United Kingdom, whether in borrowing moneys, or getting servants for the Government of India. Now in all these matters, the council is expected to advise him. He is not necessarily bound to accept their views in all matters. For, every order or communication sent to India must be signed by him, and every despatch from India must likewise be addressed to him. Moreover, upto 1919, the Secretary of State could act without consulting his council in the following cases:—

In advising the Sovereign to make appointments left to his discretion, that is, in all the appointments from the Governors of Presidencies downwards, which require the sanction of the Secretary of State, that officer need not consult his council, and if he can thus control the choice of men for the highest appointments in India, his power in the actual administration of India can be readily imagined.

(b) Sending or receiving communications to and from India marked "Secret." Such communications chiefly related to the making of war or peace, negotiations with foreign powers, or relations with the native states. As a rule, business of this description was transacted through the Political Committee of his Council which takes the place of the old Secret Committee of the Court of Directors.*

(c) In matters "urgent" provided he recorded his reasons for regarding them "Urgent."

In the present Act, the sections relating to "Urgent" and "Secret" matters have been omitted. But we cannot therefore conclude, that in these matters the decision of a majority of the Councillors is now made binding upon the Secretary of State, or even that the Council is consulted. Even granting that the council can participate more fully now in settling the policy relative to the administration of India than before, it is open to question if its importance has really increased in view of the new devolution of authority under the present act. Besides section 29A provides for the creation of a High Commissioner, to whom is or will be delegated a good many of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making contracts. The whole of the Agency business of the India office will, therefore, be practically transferred to him, and the utility of the Council would be thus greatly circumscribed.

Though the Secretary of State can overrule his council in some of the most important matters relating to India, there are other cases no doubt where the decision of the majority is binding upon him. These are :—

* A notable example is to be found in Morley's Recollections. Mr. Sinha, as he then was, wished to be consulted in some discussion before the Government of India but was not allowed to do so. He objected on the ground that he was a full member, and as such had every right to be heard. Morley seems to have resented this attitude of the first Indian in the Executive Council, but that gentleman having shortly afterwards resigned, the issue was not decided, and of course never made public.

- (1) The appropriation of the revenues of India or property.
- (2) Purchase, sale or mortgage of property.
- (3) The exercising of powers of entering into contracts subject to the provisions regarding the appointment of a High Commissioner for India.
- (5) The alteration of salaries, furlough rules etc.
- (4) Approving rules for making assurances in India.
- (6) Appointments of natives of India to offices reserved for the Indian Civil Service and the making of provisional appointments to the Council of the Governor-General.

But all these are matters on which, normally speaking, there is very little probability of a difference of opinion arising between men of common sense. They involve no question of principle likely to divide such men as the council is generally composed of. And, therefore, the provision that the Secretary of State cannot act without the support of a majority of his council in such cases, has at best but an academic importance.

If we leave aside those cases on the one hand in which the Secretary of State must consult his council and abide by a decision of the majority of his council, and on the other hand those other and by far the most important cases in which he need not consult his council, the rest of the ordinary business of the administration is, carried on by the Secretary of State in consultation with his council. But it does not mean that in such ordinary cases, even though he has to consult his council, he should abide by the opinion of a majority. Wherever he is not bound by law to have a majority of his council to support him, there is nothing to prevent the Secretary of State from taking a decision against the views of the council—even of the whole council. The utmost that the council can demand is that their views, and the reasons for those views, should be entered on the records of the council, with some faint hope that one day,